

## GLYPHOSATE AND CALIFORNIA PROPOSITION 65

### **BACKGROUND:**

- Proposition 65 (“Prop 65”) is a California law requiring businesses to provide warnings to Californians about significant exposure to chemicals that cause cancer, birth defects or other reproductive harm. Warnings can be placed on products or displayed at the point of sale. It also requires California to publish a list of these chemicals at least yearly.
- Registrants of pesticide products have, at times, chosen to comply with Prop 65 by placing such warnings on their EPA-approved pesticide labels.
- While the International Agency for Research on Cancer (IARC) classified glyphosate as “probably carcinogenic to humans,” EPA scientists independently evaluated a more extensive dataset than IARC to reexamine the carcinogenic potential of glyphosate and concluded that glyphosate is “not likely to be carcinogenic to humans.” *See also Glyphosate Registration Review Fact Sheet.*
- Finding a Prop 65 warning about glyphosate’s carcinogenicity to be misleading, a federal judge issued a preliminary injunction to prevent California from enforcing its warning requirement for products containing glyphosate.
  - False or misleading statements on pesticide labeling make a pesticide product misbranded and therefore illegal to sell and distribute.

### **KEY POINTS:**

- In registering pesticides, EPA must determine that the labeling complies with the requirements of Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which requires that the product not be misbranded.
- In January 2020, EPA published the Interim Decision for glyphosate registration review. The interim decision concluded that glyphosate poses no risks of concern to human health when used in accordance with its current label. (*See also Glyphosate Registration Review Fact Sheet.*)
- Having determined that glyphosate is “not likely to be carcinogenic to humans,” EPA considers the Prop 65 warning language for glyphosate to be a false and misleading statement. As such, pesticide products bearing the Prop 65 warning statement due to the presence of glyphosate could be considered misbranded under the FIFRA.
- By letter dated August 8, 2019, EPA informed glyphosate registrants that it will no longer approve labeling that includes the Prop 65 warning for glyphosate-containing products and asked registrants of glyphosate products currently bearing Prop 65 warning language to submit draft amended labeling that removes this language within 90 days.

### **TALKING POINTS:**

- Despite the findings of EPA, international expert panels and regulatory authorities, California has listed glyphosate as “probably carcinogenic to humans” under Proposition 65.
- Because this runs counter to EPA’s extensive scientific assessment, EPA informed glyphosate registrants in August 2019 that it considers labels bearing a Prop 65 cancer warning to be misleading and therefore products that bear it to be misbranded under FIFRA. EPA is working with registrants to remove this warning from their labels.
- On December 20, 2019, the U.S. Government filed an amicus brief in the 9th Circuit appeal in *Monsanto v. Hardeman*, where a lower court jury verdict found Monsanto had failed to warn a California man of the cancer risks of glyphosate. The brief argues that state tort law claims for failure to warn are preempted under section 24(b) of FIFRA because state courts’ common law requirements to warn are “in addition to or different from” what EPA has required for glyphosate labeling under FIFRA. The USG has a strong interest in preserving the delineation between federal and state authority that ensures the EPA can maintain nationally uniform labeling.

OCSPP-6B